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REMARKS/DISCUSSION:

This Amendment A is being filed within three months after the shortened statutory period for response that ended on June 31, 2006. Accordingly, a Petition for a Three-Month Extension of Time is attached hereto.

By this Amendment A, claims 1-5 and 18-21 are pending in this application. Claims 9-17 and 24-31 have been withdrawn, and Claims 6-8 and 22-23 has been canceled.

Amendment and/or cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claim Objections

Claims 2-8 stand objected to as noted in the Office Action. Claims 2 and 8 have been amended.

Rejection under 35 U.S.C. § 112

Claim 8 stands rejected as failing to comply with the enablement requirement. Claim 8 has been canceled.

Claims 6 and 18-23 stand rejected as being indefinite. Claim 6 and 22 have been canceled. Claims 18-21 have been amended to overcome the rejection.

Rejection under 35 U.S.C. § 101

Claims 1-8 and 18-23 stand rejected as claiming human body parts. Claims 1 and 18 have been amended in accordance with the recommendation from the Examiner.

Rejection under 35 U.S.C. § 102(b)

Claims 1 and 18 stand rejected as being anticipated by Hickle (US 2002/0017296) as noted in the Office Action.

Applicant respectfully transverses the Examiner's rejection of Claims 1 and 18 over Hickle because, according to Applicant's understanding, the Hickle reference neither teaches nor suggests the elements of the Applicant's invention. It is Applicant's understanding that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See for example MPEP 2131.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. Under this standard, Applicant submits that Hickle fails to anticipate amended independent claims 1 and 18.

Independent claims 1 and 18 (claim 26 is canceled without prejudice to the Applicant) include the following limitation:

wherein the controller analyzes at least a response generated by the patient and generates a threshold response, wherein the threshold response can be varied based on at least the response generated by the patient,

The Hickle reference does not, according to Applicant's understanding, teach or suggest a threshold response or the fact that the controller can vary the threshold response based on the response generated by the patient. Accordingly, Applicants respectfully request reconsideration of this rejection.

Rejection under 35 U.S.C. § 103

Claims 2-8 and 19-23 stand rejected as being unpatentable over Hickel in view of Ellis (US 4,674,330). Based on the previous discussions, Hickel nor Ellis, alone or in combination, disclose or suggest the claimed invention. Reconsideration is requested.

Under MPEP 2143, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some teaching suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

In view of the foregoing requirements for a *prima facie* case of obviousness, Applicant submits that the combined art of record fails to render the amended claims obvious. In particular, Applicant notes that the combination of references fails to teach or suggest all of the limitations of each amended independent claim in accordance with MPEP 2143.03. In addition, Applicant submits that even if the combined art of record taught or suggested all of the limitations of each present independent claim, there is no teaching, suggestion, or motivation to modify or combine the references to obtain the invention presently claimed, such that a *prima facie* case of obviousness has not been, and cannot be, established in accordance with MPEP 2143.01.

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Conclusion

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. §§ 101, 112, 102(b) and 103 have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-5033USNP/VEK.

Respectfully submitted,

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DATED: October 2, 2006